

United States

Circuit Court of Appeals

For the Ninth Circuit.

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CRANE COMPANY, a Corporation,  
Appellant,  
vs.

FIDELITY TRUST COMPANY, Trustee, a Corporation, and WASHINGTON-OREGON CORPORATION, INDEPENDENT ELECTRIC COMPANY, a Corporation, and WILLIS D. HOAG,  
Appellees.

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Supplemental Transcript of Record.

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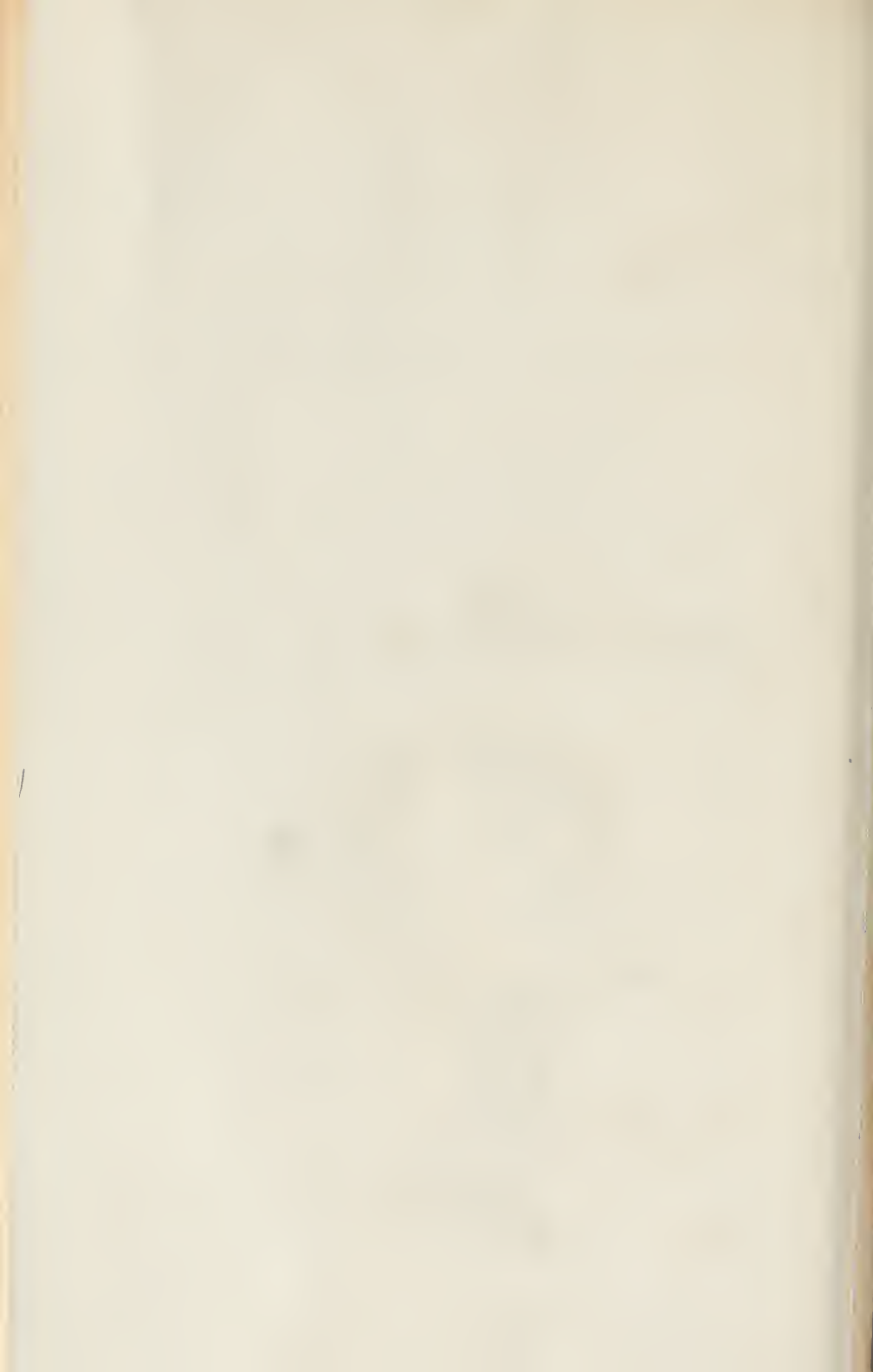
Upon Appeal from the United States District Court  
for the Western District of Washington,  
Southern Division.

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Filed

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F. D. Mendenhall



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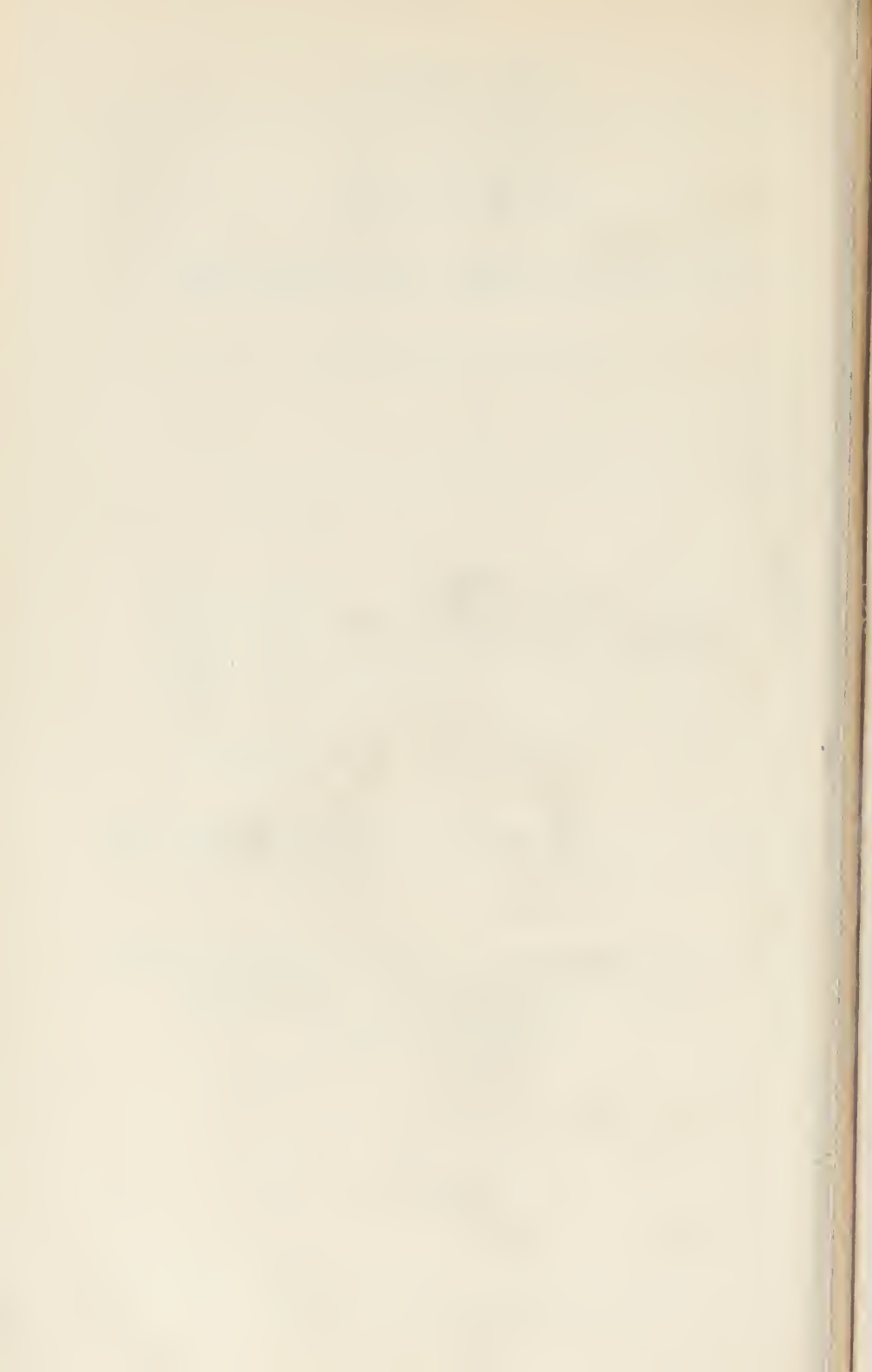
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# INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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### Exhibit "D."

#### RELEASED PROPERTY IN COUNTY OF COWLITZ, STATE OF WASHINGTON.

That certain tract of land situated in said county of Cowlitz described as follows: Beginning at a point 27.13 chains west and 10 chains south of the northeast corner of section 26, township 8 north of range 2 West of Willamette Meridian on the west side of that county road known as the Silver Lake Road running thence in a northeasterly direction with the angling line of said road a distance of 209.4 feet; thence west a distance of 209.4 feet; thence in a southwesterly direction and paralleling the angling lines of said county road a distance of 209.4 feet; thence east a distance of 209.4 feet to the place of beginning, said tract of land being situated in said section 26; also that certain reservoir situated on the tract of land above described.

That certain tract of land described as follows: Beginning at a point 60.6 feet west of the intersection of the north line of the Peter W. Crawford donation land claim in Township 8 North of Range 2 West of the Willamette Meridian with the west line of the right of way of the Northern Pacific Railway and running thence south  $15^{\circ}$  east 30 feet to a point which is the initial point of the land now being described; thence from said initial point south  $15^{\circ}$  east 150 feet; thence west 40 feet; thence north  $15^{\circ}$  west 150 feet; thence east 40 feet to the initial point, together with any and all buildings, machinery or

pumping plant on September 25, 1913, situated thereon, or connected therewith, or a part thereof.

Any and all mains, pipe-lines of every character, nature and description which were on September 25, 1913, owned or in the use, possession and enjoyment of said Washington-Oregon Corporation within the corporate limits of the city or town of Kelso for the purpose of conveying or distributing water, including any and all pumping stations, pumps, machinery, connections, supplies and material used in connection therewith, for what was then known as the water system of said Washington-Oregon Corporation for the said city or town of Kelso.

It being the purpose and intent of the three preceding paragraphs hereof to describe any and all of the lands and any and all of the pumping stations, machinery, pipes, pipe-lines and the entire water distributing system of said Washington-Oregon Corporation existing on September 25, 1913, for the said city or town of Kelso, or then used in connection therewith, or then belonging thereto, or then a part thereof.

Any and all of those certain rights and privileges which were reserved to the said Washington-Oregon Corporation for a period of thirty-five years from the 23d day of October, 1911, in that certain warranty deed executed by said Washington-Oregon Corporation to John L. Harris, F. L. Stewart, H. E. McKenney, J. H. Swager, J. S. Robb, C. A. Taylor and J. M. Ayres, recorded in Volume 54 of Deeds of said Cowlitz County at page 135, in and by which said Washington-Oregon Corporation reserved the



right to lay, repair, replace and maintain and operate a pipe-line and pipe-lines, intake and intakes, steam and electric pumps and filters for the transmission of water for any purpose on, over and across that portion of the tract of land conveyed by said deed which was then in use for said purpose, together with the right to house said lines, intakes, pumps, and filters, also the right of ingress and egress for the purpose of maintenance and repair, and any and all reservations in such deed contained.

All those rights, privileges and franchises granted by and described in that certain ordinance of the City of Kelso, officially known as Ordinance Number 122, and entitled "An Ordinance granting to Washington-Oregon Corporation its successors and assigns, the right, privilege and franchise of supplying with water the City of Kelso and the people therein, and permission to lay, maintain and use water mains, pipes and appurtenant, fixtures, in, under, through and across the public streets and ways of the City of Kelso; fixing restrictions thereon, prescribing the duties and power of the grantee; fixing the term and terms and conditions thereof; providing for forfeiture and prescribing the method of declaring and exercising the same." Passed by the council of said city on April 7, 1911, and approved by the mayor thereof.

Also all rights of way or easements possessed by Washington-Oregon Corporation on September 25, 1913, for the main pipe-line or any pipe-line or lines, or any distributing lines therefrom.

A tract of land beginning at a point fifteen feet south of the northwest corner of the Peter W. Crawford donation land claim, so called, in township eight north, range two west of the Willamette Meridian, running thence east parallel to and fifteen feet south of the north boundary of said donation land claim a distance of two hundred nine feet to the westerly boundary of the right of way of Northern Pacific Railway Company; thence along said westerly boundary of said right of way in a southerly direction to the intersection of the line now being described with what would be the center line of Cowlitz Avenue in the City of Kelso in said County of Cowlitz if said center line were projected or extended thence north seventy-six degrees west a distance of 94 feet; to the meander line of the Cowlitz River; thence along said meander line north  $6^{\circ}$  east a distance of 338 feet; thence north  $24^{\circ}$  east a distance of 442 feet; thence north a distance of 594 feet; thence north  $7^{\circ}$  west 300 feet to the place of beginning and containing 2.33 acres, more or less.

All buildings situated on the tract of land described in the next preceding paragraph hereof together with all property therein contained owned by Washington-Oregon Corporation on October 23, 1911, excepting, however, a building constructed of galvanized iron erected by Washington-Oregon Corporation, and then used for the purpose of housing a filter and machinery therein installed by Washington-Oregon Corporation and excepting also the entire contents of said building.

The two preceding paragraphs being subject to the reservations, exceptions, conditions and covenants set forth in a certain deed from Washington-Oregon Corporation to John L. Harris, F. L. Stewart, H. E. McKenney, J. H. Swager, J. S. Robb, C. A. Taylor and J. M. Ayres, dated October 23, 1911, and recorded in the Record of Conveyances of said County of Cowlitz in Volume 54 of Deeds, at page 135.

RELEASED PROPERTY IN COUNTY OF  
LEWIS, STATE OF WASHINGTON.

All that property which was conveyed by Lewis County Water Company to Twin City Light and Traction Company, by deed dated May 2, 1911, and recorded in Book 112 of Deeds at page 123 of the Records of Lewis County, Washington, and thereafter conveyed by Twin City Light and Traction Company by deed dated May 5th, 1911, and recorded in Book 110 of Deeds at page 574, of the Records of Lewis County, Washington, including the following described property:

Lot 1, in Block 23 of Chehalis Land and Timber Company's Second Addition to Chehalis, as shown by the plat thereof and recorded in the office of the County Auditor of said County of Lewis:

Lot 6 in Block 24 of Chehalis Land and Timber Company's Second Addition to Chehalis, as shown by the recorded plat thereof in the office of the County Auditor of said County of Lewis:

The east fractional part of Lot 7 in Block 24 of Chehalis Land and Timber Company's Second Addi-

tion to Chehalis, as shown by the recorded plat thereof in the office of the County Auditor of said County of Lewis, which part of particularly described as follows, to wit: Beginning at a point where the northeast line of Lot 5 in Block 24 of said addition intersects the southeast line of said lot 7, running thence northeast across said lot 7, continuing on a line with the east line of said lot 5, to the northeast line of said Lot 7; running thence easterly on the northeast line of said Lot 7 to the east line of said Lot 7, running thence southerly to the place of beginning.

Lot 3 in Block 17 of Chehalis Land and Timber Company's Second Addition to Chehalis, according to the recorded plat thereof in the office of the County Auditor of said County of Lewis.

Lot 4 in Block 17 of Chehalis Land and Timber Company's Second Addition to Chehalis, according to the recorded plat thereof in the office of the County Auditor of said County of Lewis.

Lot 1 in Block 20 of Chehalis Land and Timber Company's Second Addition to Chehalis, according to the recorded plat thereof in the office of the County Auditor of said County of Lewis.

Lot 5 of Block 25, of Chehalis Land and Timber Company's Second Addition to Chehalis, according to the recorded plat thereof in the office of the County Auditor of said County of Lewis.

That portion of Lot 7 in Block 24 of Chehalis Land and Timber Company's Second Addition to Chehalis, according to the recorded plat thereof in the office of the County Auditor of said County of

Lewis, which part is particularly described as follows, to wit:

Commencing at the northeast corner of Lot 5 in said Block 24 where the same intersects the south line of said Lot 7 running thence westerly on the south line of lot 7 a distance of 50 feet, running thence northerly along a line which would be a prolongation of a line between lots 4 and 5 in said block 24, a distance of 100 feet, to the north line of said lot 7; running thence easterly on the north line of said lot 7 a distance of 50 feet, running thence southerly a distance of 100 feet to the point of beginning;

A part of Lot 8 in Block 24 of Chehalis Land and Timber Company's Second Addition to Chehalis, according to the recorded plat thereof in the office of the County Auditor of said County of Lewis, which part is particularly described as follows, to wit: Beginning at a point on the northeast line of Chehalis Land and Timber Company's Second Addition to Chehalis where that line intersects the south line of said lot 8, running thence northwesterly along said boundary line of said addition a distance of 123.6 feet, running thence at right angles with said boundary line a distance of 122.3 feet to a point on the south boundary line of said lot 8, where said boundary line is intersected by a prolongation northerly of the west line of lot 5, in said block 24, running thence easterly along said lot 8 to the point of beginning, containing seventeen hundredths of an acre, more or less;

That part of the northeast quarter of the southwest quarter of section 5 in township 13 north of



range 2 west of Willamette Meridian, which part is particularly described as follows, to wit: Beginning at a point on the quarter section line running north and south in section 5, in township 13 north of range 2 west of the Willamette Meridian, which point is 570 feet south of the center of said section 5, running thence north on said quarter section line a distance of 570 feet to the center of said section 5, running thence west along the quarter section line which runs east and west, a distance of 520 feet, running thence south a distance of 526 feet to the center of the Newaukum River, running thence following along the center of said river upstream to a point 81.2 feet west of the place of beginning, running thence east a distance of 81.2 feet to the place of beginning containing 5 acres, more or less.

Certain rights of way for the maintenance of a water pipe-line more fully described in the following deeds: A certain deed from S. A. Phillips and wife to Chehalis Water Company, dated May 10, 1893, and recorded in the records of the County Auditor of said County of Lewis in Book 39, of deeds, at page 262; a certain deed from J. B. Rice and wife to Chehalis Water Company, dated May 10, 1893, and recorded in the records of the County Auditor of said County of Lewis in Book 39 of Deeds, at page 258; a certain deed from the State of Washington, by the Trustees of the Washington State Reform School, dated May 10, 1893, and recorded in the records of the County Auditor of said County of Lewis in Book 39 of Deeds, at page 259; a certain contract between E. A. Frost and Chehalis Water Company,

dated March 17, 1905, and recorded in the records of the County Auditor of said County of Lewis in Book 80 of Deeds, at page 129.

**Exhibit "E."**

**PROPERTY ACQUIRED BY CITY OF  
CENTRALIA.**

**FIRST:** Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, and 17, in block forty-one in second Railroad Addition to the City of Centralia.

**SECOND:** Lots 1, 2, 3, and 4 in Block 42 of said second Railroad Addition to the City of Centralia.

**THIRD:** (a) Block 4 in Pleasant View Addition to the City of Centralia; (b) Block 5 in Pleasant View Addition to the City of Centralia; (c) A tract of land sometimes known as Tax lot number 18, containing  $1\frac{1}{4}$  acres more or less, and particularly described as follows: Beginning at a point four hundred feet east of the southwest corner of the southeast quarter of the northwest quarter of Section 9, in Township 14 north, range 2 West of the Willamette Meridian; running thence east 150 feet; thence north 375 feet; thence west 150 feet; thence south 375 feet to the place of beginning.

(d) A tract of land formerly a portion of Locust Street, so called in said Pleasant View Addition to the City of Centralia bounded on the north by the south line of the tract of land described in the last foregoing subdivision (b) hereof, on the east by the west line of the tract of land described in the last foregoing subdivision (c) hereof, on the south by the north line of the tract of land described in the last foregoing subdivision (2) hereof, and on the

west by a line formed by connecting the southwest corner of the tract of land described in said subdivision (b) with the northwest corner of the tract of land described in said subdivision (a).

FOURTH: Twelve and one-half miles more or less, of pipes, mains, service pipes and connections, constituting a system for the distribution and transmission of water located within the corporate limits of said City of Centralia as the same were on June 3, 1913, established whether in public ways or elsewhere, together with such rights as Washington-Oregon Corporation then had to repair, replace, maintain and operate said pipes, mains service pipes and connections upon or in the ground where they then were.

FIFTH: The following structures and buildings situated, owned or used by Washington-Oregon Corporation on the tract of land described in paragraph second hereof.

(a) A wooden building used for and known as a power-house together with the mechanical water filter boiler, two steam pumps and all other property therein contained.

(b) Two certain open wells of water.

(c) Ten certain driven wells of water, more or less.

SIXTH: Twenty so-called driven wells of water more or less located on the tract of land described in paragraph first hereof.

SEVENTH: The following structures then situated, owned or used by the Washington-Oregon



Corporation on the lands described in paragraph third hereof, that is to say:

(a) A certain cylindrical reservoir for the storage of water constructed of brick and lined with concrete, of the diameter of about 55 feet situated in part on the tract of land described in subdivision (b) of paragraph third hereof in part on the tract of land described in subdivision (c) of said paragraph third and in part on the tract of land described in subdivision (d) of said paragraph third.

(b) A certain other cylindrical reservoir for the storage of water constructed of reinforced concrete of the diameter of about 73 feet, situated in part on the tract of land described in subdivision (a) of paragraph third hereof, in part on the tract of land described in subdivision (c) of said paragraph third and in part on the tract of land described in subdivision (d) of said paragraph third.

EIGHTH: The right to divert, appropriate and use for any purpose all water on any one or all of the tracts of land described in paragraphs first, second and third hereof.

NINTH: Such right as Washington-Oregon Corporation had on June 3, 1913, to divert, appropriate and use for any purpose all or any part of the waters of the Skookumchuck River in said County of Lewis.

TENTH: All other lands, rights of way, roads, water rights, and water locations and appropriations, water ditches, flumes, reservoirs, pipe-lines, water-mains, service pipes, conduits and all other rights, and the means for appropriating, conveying,

storing or distributing water, any and all pumping stations and any and all other structures, buildings, and erections, all machinery, engines, boilers, cables, pipes, joints, connections, taps, valves, tools, implements and appliances of every description and any and all rights, privileges, franchises and immunities of every kind and description owned or used on June 3, 1913, by Washington-Oregon Corporation in connection with or in the operation of what is known as its water system in and of the City of Centralia in and of the County of Lewis, State of Washington.

It being the purpose and intent to describe the entire water system and plant of Washington-Oregon Corporation in and of the City of Centralia as the same was on June 3d, 1913, operated and in use and as the same was purchased by Washington-Oregon Corporation from Centralia Water Supply Company, a corporation, and conveyed by deed dated June 1, 1911, and recorded August 23, 1911, in Volume 114 of Deeds in the office of the Auditor of Lewis County, Washington, at pages 93 et seq. thereof, together with any and all betterments, extensions and improvements thereafter made on or to such system up to June 3, 1913.

All of those rights, privileges, and franchises granted by and described in that certain ordinance of the City of Centralia officially known as Ordinance No. 136, entitled "An Ordinance Granting to the Centralia Water Supply Company, its successors and assigns," etc., passed by the Council of said city on September 11, 1906, approved by the Mayor thereof on the same day and recorded in Book

3 of Ordinances at page 1.

Subject, however, to the *covenatso* conditions, reservations and exceptions set forth in a certain deed from Washington-Oregon Corporation to the City of Centralia dated June 3, 1913, and recorded in the Records of Conveyances of said County of Lewis on Block 123 of Deeds at page 104.

*In the District Court of the United States for the Western District of Washington.*

IN EQUITY.—No. 15-E.

FIDELITY TRUST COMPANY, Trustee, Complainant,

vs.

WASHINGTON-OREGON CORPORATION,  
INDEPENDENT ELECTRIC COMPANY  
and WILLIS D. HOAG, Defendants.

BILL OF COMPLAINT.

To the Honorable the Judges of the District Court of the United States for the Western District of Washington, Sitting in Equity:

Fidelity Trust Company, Trustee under the mortgage hereinafter referred to, a corporation organized and existing under and by virtue of the laws of the State of Pennsylvania, brings this, its Bill of Complaint, against Washington-Oregon Corporation, a corporation organized and existing under and by virtue of the laws of the State of Washington, and thereupon your orator complains and says:—

*First.*—That on and prior to the first day of April, 1911, the defendant, Washington-Oregon Corpora-

tion, was and still is a corporation duly organized and existing under the laws of the State of Washington, and a resident and citizen of the State of Washington, and an inhabitant of the Western District of Washington, within the meaning of the laws determining the jurisdiction of this Honorable Court, and that Washington-Oregon Corporation then was and still is authorized to construct, own, maintain and operate the property and premises hereinafter mentioned, and to make, execute and deliver the mortgage herein sought to be foreclosed, and to make, deliver and issue the bonds therein referred to.

*Second.*—That your orator, Fidelity Trust Company, at all times hereinafter mentioned was, and still is, a corporation duly organized and existing under and by virtue of the laws of the State of Pennsylvania, and that it is a resident and citizen of the State of Pennsylvania, and an inhabitant of the Eastern District thereof within the meaning of the laws determining the jurisdiction of this Honorable Court, and that at all times hereinafter mentioned, it was, and now is, duly authorized and empowered under the terms of its charter, to take and hold in trust the property transferred and conveyed to it in trust as hereinafter stated, and to execute and perform the trust upon it imposed under and by virtue of the mortgage or deed of trust hereinafter described.

*Third.*—That Independent Electric Company at all times hereinafter mentioned was, and still is, a corporation duly organized and existing under and by virtue of the laws of the State of Washington,

and at all such times was, and still is, a resident and citizen of the State of Washington.

*Fourth.*—That Willis D. Hoag at all times hereinafter mentioned was, and still is, a resident and citizen of the State of Washington.

*Fifth.*—That heretofore and prior to the nineteenth day of May, 1911, the defendant, Washington-Oregon Corporation, in the exercise of its powers under the laws of the State of Washington and Oregon, and in accordance with resolutions duly passed by its board of trustees and by its stockholders at respective meetings thereof duly called and held, which said resolutions of its stockholders were duly concurred in by the vote in person or by proxy of holders of more than two-thirds of the par value of the issued capital stock of Washington-Oregon Corporation, duly authorized the execution and delivery by the proper officers of Washington-Oregon Corporation of negotiable bonds in the amount of \$5,000,000 par value, dated the first day of April, 1911, and payable at the office of your orator, as trustee, in the city of Philadelphia, State of Pennsylvania, on the first day of April, 1936, in gold coin of the United States of America, of or equivalent to the present standard of weight and fineness, or at the option of the Company on any semi-annual interest day before maturity by payment of the principal sum due thereon, with five per centum thereof additional and accrued interest; said bonds to bear interest at the rate of six per centum per annum, payable in like gold coin or its equivalent semi-annually on the first days of April and October of each year at



the office of your orator, and without deduction from either principal or interest of any tax which might by any future or then existing laws of the United States, or of the State of Washington, be imposed thereon; said bonds to be for such denomination or par value, and in such form consistent with the terms of the mortgage or deed of trust hereinafter referred to, as at the time of the issue thereof the board of trustees of the Washington-Oregon Corporation should prescribe; the \$1,500,000 of said bonds which, as therein provided, should be issued forthwith, to be coupon bonds of the denomination of \$1000 numbered consecutively from one upwards, and coupon bonds of the denomination of \$500 numbered from A-1 upwards; said bonds aggregating \$1,500,000 to be certified by your orator, as trustee, and by it delivered to or upon the order in writing of the president, vice-president or treasurer of Washington-Oregon Corporation, or such other persons as the board of trustees might direct, upon the execution, delivery and recording of the mortgage or deed of trust hereinafter referred to; the balance of said bonds, aggregating \$3,500,00 par value, to be retained by Washington-Oregon Corporation and when, and from time to time, and in such amounts as should be required for the purpose of redeeming the outstanding bonded indebtedness on the property of Washington-Oregon Corporation and in order to provide for construction, equipment, betterments, improvements and additions to the plant and property of the Washington-Oregon Corporation then owned or thereafter to be acquired, when

made and to be made, and for the acquisition of any property real or personal, or franchises, which Washington-Oregon Corporation was legally authorized and empowered to own, lease and operate for any of said purposes, and for other corporate purposes, the said \$3,500,000 par value of bonds were to be delivered to your orator and by your orator certified and delivered to Washington-Oregon Corporation, upon resolution of the board of trustees of said Washington-Oregon Corporation, subject to the limitations in said mortgage contained.

*Sixth.*—That on or about the nineteenth day of May, 1911, being thereunto duly authorized by the laws of the State of Washington and Oregon, and by resolutions duly passed by the board of trustees and by the stockholders of Washington-Oregon Corporation at respective meetings thereof duly called and held, which said resolutions of its stockholders were duly concurred in by the vote in person or by proxy of holders of more than two-thirds of the par value of the issued capital stock of Washington-Oregon Corporation, the defendant, Washington-Oregon Corporation, duly made, executed and delivered to your orator as trustee, its said mortgage or deed of trust dated the first day of April, 1914, wherein and whereby, in order to secure the payment of the principal and interest of all such bonds at any time issued and outstanding and to secure the performance and observance of all the covenants and conditions in said mortgage contained, it granted, bargained, sold, released, conveyed, assigned, transferred, and set over unto your orator as trustee, its successors and assigns forever, all the property de-

scribed in the paragraphs of said mortgage numbered "First" to "One hundred and twenty-fourth" inclusive, together with all its property, real or personal, rights, privileges and franchises of every kind and nature whatsoever and the rents, issues and profits thereof, then owned or thereafter to be acquired by it; to have and to hold all of the property described in said mortgage unto your orator, as trustee, and its successors and assigns forever, in trust, to secure the payment equitably and ratably, without preference or priority of one kind over another of said bonds. A true copy of said mortgage is annexed to this Bill of Complaint as a part hereof, marked "Exhibit A," which your orator prays may be taken in all respects as if fully set forth in the body of this Bill.

*Seventh.*—That said mortgage duly authorized, made, executed and delivered in all respects in conformity with law, and your orator duly accepted the trust created by and in said mortgage which was duly filed for record as a real and chattel mortgage in all the counties of said States of Washington and Oregon in which the property pledged by mortgage was situated, to wit: In the office of the Recorder of Conveyances in and for the County of Columbia, State of Oregon on the twenty-sixth day of May, 1911, at 9:30 o'clock in the forenoon thereof, and recorded in the Records of Mortgages of Real Property in Book R thereof at page 547, and indexed in the general index of mortgages of personal property or chattel mortgages, as well as in the general index of mortgages of real property; in the office of the



Recorder of Conveyances in and for the County of Washington, State of Oregon, on the twenty-sixth day of May, 1911, at 3:15 o'clock in the afternoon of said day, and recorded in the Records of Mortgages of Real Property in said office in Book 61 thereof at page 500 and indexed in the general index of mortgages of personal property or chattel mortgages as well as in the general index of mortgages of real property; in the office of the County Auditor of the County of Clarke in and for the State of Washington on the twenty-sixth day of May, 1911, at 4:20 o'clock in the afternoon of said day, and recorded in said office in the Records of Mortgages of Real Property in Book 89 thereof at page 302, and in the Records of Mortgages of Personal Property in Book G thereof at page 217, a duplicate original of said mortgage being filed in a file kept in said office in accordance with the provisions of Section 8782 of Remington & Ballinger's Annotated Codes and Statutes of Washington; in the office of the County Auditor in and for the county of Cowlitz in the State of Washington on the twenty-sixth day of May, 1911, at nine o'clock in the forenoon of said day and recorded in the Records of Mortgages of Real Property in Book 53 thereof at page 120, and in the Records of Mortgages of Personal Property in Book 16 thereof at page 410, a duplicate original of said instrument being filed in a file kept in said office in accordance with the provisions of Section 8782 of Remington & Ballinger's Annotated Codes and Statutes of Washington; and in the office of the County Auditor of the County of Lewis in the State of

Washington on the twenty-sixth day of May, 1911, at 3:15 o'clock in the afternoon of said day and recorded in said office in the Records of Mortgages of Real Property in Book 70 thereof, at page 1, and in the Records of Mortgages of Personal Property in Book 9 thereof at page 161, a duplicate original of said instrument being filed in a file kept in said office in accordance with the provisions of Section 8782 of Remington & Ballinger's Annotated Codes and Statutes of Washington.

*Eighth.*—That forthwith upon the execution, delivery and recording of said mortgage Washington-Oregon Corporation duly executed bonds of the issue described in said mortgage of the aggregate par value of principal of \$1,500,000, all of which bonds were duly certified by your orator in all respects as provided in said mortgage, and as so authenticated were duly issued and delivered by your orator in the manner provided in and by said mortgage. That in or about the month of October, 1911, pursuant to the provisions of Article I of said mortgage and pursuant to a duly executed order in writing of the treasurer of Washington-Oregon Corporation, stating the amount of bonds required, to wit, bonds of the par value of principal of \$200,000, and the purpose for which the same were required, to wit, in order to provide funds for the acquisition of certain property, for the construction of certain machinery and lines, and for future extensions, improvements and betterments to the property of Washington-Oregon Corporation then owned or thereafter to be acquired, and upon the delivery to your orator of a

certified copy of a resolution of the board of trustees of Washington-Oregon Corporation duly passed at a meeting of its board of trustees at a meeting thereof duly called and held, authorizing the execution and delivery of such certificate, together with a sworn statement of the president or vice-president of Washington-Oregon Corporation that said bonds or the proceeds thereof were to be used for the purposes therein set forth, your orator duly certified and delivered to Washington-Oregon Corporation bonds of the par value of principal of \$200,000. All of said bonds, with the exception of bonds of the par value of \$5500, which are retained by Washington-Oregon Corporation, and bonds of the par value of \$131,000, which were duly retired by Washington-Oregon Corporation, in accordance with the provisions of said mortgage, are now outstanding, and your orator is informed and believes, and therefore avers, that said bonds so issued and delivered, and all of them, to wit, bonds of the par value of principal of \$1,563,500, have been duly issued, negotiated and sold to divers persons who have thereby become *bona fide* holders thereof as purchasers of the same for value, and that all of said bonds are now, and since and prior to April 1st, 1914, have been, outstanding, valid, binding and subsisting obligations of Washington-Oregon Corporation.

*Ninth.*—That subsequent to the execution, delivery and recording of said mortgage as aforesaid and prior to the commencement of this suit Washington-Oregon Corporation acquired by several deeds under seal within such times duly executed and delivered

to Washington-Oregon Corporation and within such times duly recorded in the proper offices in the several counties wherein the property conveyed by said, respective deeds was situated, certain property, a description whereof is contained in a certain schedule, marked "Exhibit B," which is annexed to this Bill of complaint and made a part hereof.

*Tenth.*—That subsequent to the execution, delivery and recording of said mortgage as aforesaid and prior to the commencement of this suit, and pursuant to the provisions contained in Article II of the said mortgage and pursuant to the several certificates of the president or of the vice-president of Washington-Oregon Corporation, under the seal of said corporaiton, attested by its secretary certifying to the adoption of several resolutions by its board of trustees requesting such releases and stating that the prices to be obtained upon the proposed sales thereof to the proposed purchasers were the fair and reasonable value thereof, your orator, by several instruments in writing under seal then duly made and delivered, duly released from the operation and effect of said mortgage the property described in a certain schedule, marked "Exhibit C," which is annexed to this Bill of Complaint and made a part hereof.

*Eleventh.*—That subsequent to the execution and recording of said mortgage and prior to the commencement of this suit, the City of Centralia duly acquired, free from all incumbrances, the property described in a certain schedule marked "Exhibit D," which is annexed to this Bill of Complaint and made



a part hereof, and said last-mentioned property was thereupon duly released from the operation and effect of said mortgage.

*Twelfth.*—That on the first day of April, 1914, Washington-Oregon Corporation made default in the payment of the installment of interest due on that day on all of said bonds issued and outstanding and secured by said mortgage as aforesaid; that Washington-Oregon Corporation has not provided any fund with which to pay the said installment of interest or any part thereof, and that the whole of said installment of interest remains due and unpaid.

*Thirteenth.*—That pursuant to the provisions of Article VII of said mortgage the holders of a majority in value of the outstanding bonds secured by said mortgage on or about the twentieth day of July, 1914, duly elected and duly notified in writing Washington-Oregon Corporation and your orator that they elected, that the whole principal of all the bonds secured by said mortgage should forthwith be declared in writing by your orator to be and should immediately become due and payable, and thereupon and on or about the twentieth day of July, 1914, your orator duly declared in writing and notified Washington-Oregon Corporation that the whole principal of all the bonds secured by said mortgage was forthwith due and payable.

*Fourteenth.*—That on or about the twentieth day of July, 1914, in accordance with the provisions of Article VII of said mortgage the holders of a majority in value of the outstanding bonds secured by said mortgage duly requested your orator, by an instru-

ment in writing signed by them, to enforce their rights under said mortgage and to institute proceedings for the foreclosure of the property mortgaged and pledged to your orator by said mortgage.

*Fifteenth.*—That each of the defendants, Independent Electric Company and Willis D. Hoag, has or claims to have some interest or lien in the property or a part thereof, pledged by said mortgage, which interest, if any, is subsequent and subordinate to the lien of said mortgage.

*Sixteenth.*—That it is provided in Article X of said mortgage that upon the filing of a Bill in Equity or commencement of other judicial proceedings to enforce the rights of your orator as trustee and of the bondholders under said mortgage, your orator shall be entitled to the appointment of a Receiver or Receivers of the property pledged by said mortgage and of the tolls, earnings, income, rents, issues and profits thereof pending such proceedings, with such powers as the Court making such appointment shall confer.

*Seventeenth.*—Your orator alleges upon information and belief that Washington-Oregon Corporation is insolvent; that Washington-Oregon Corporation defaulted in the payment of taxes upon its property for the year 1913 in an amount exceeding \$25,000, and that it was necessary for your orator, under the provisions of said mortgage, to pay said taxes together with the accrued interest and penalties thereon, said payments aggregating the sum of \$25,902.68, whereof \$5319.50 was paid on June 10th, 1914, and whereof \$20,583.18 was paid on July

13th, 1914, in order to prevent sales of property of Washington-Oregon Corporation by the sheriffs of the respective counties, in which such taxes were assessed and imposed, and in which said property was situated; that Washington-Oregon Corporation has made default in the payment of the installment of interest due on July 1st, 1914, upon the principal amounting to \$350,000, secured by a certain mortgage made by Twin City Light and Traction Company to Standard Trust Company of New York, as trustee, which last-mentioned mortgage is more particularly described in said mortgage to your orator, said installment of interest amounting to the sum of \$10,500; that Washington-Oregon Corporation defaulted in the payment of the installment of interest due on April 1st, 1914, upon the principal amounting to \$400,000 secured by a certain mortgage made by Washington-Oregon Corporation to The Philadelphia Trust, Safe Deposit and Insurance Company, as trustee, dated the first day of April, 1913, and duly recorded in the proper offices in the counties of Washington and Oregon where the property described in said last-mentioned mortgage was situated, said installment of interest amounting to the sum of \$12,000; that Washington-Oregon Corporation has defaulted in the payment of principal and interest of due and outstanding bills, payable exceeding the sum of \$250,000; that said Washington-Oregon Corporation has defaulted in the payment of accounts due and payable exceeding the sum of \$100,000; that the creditors of Washington-Oregon Corporation are numerous and that they

have threatened to institute suits to enforce their claims and that such suits may at any time be commenced and judgments entered therein, upon which executions will issue under which portions of the property of Washington-Oregon Corporation will be sold, thus resulting in the dismemberment of the plants, systems, rolling stock and other property of Washington-Oregon Corporation, the dissipation of its assets, and the interruption and disorganization of its business, to the great injury of your orator and of the holders of the bonds secured by said mortgage, and of the communities served by Washington-Oregon Corporation; that in certain of the communities, which until recently were satisfactorily served by Washington-Oregon Corporation, the municipal authorities have themselves supplied, or have negotiated with other firms and corporations for the supply of, water and electric power, whereby Washington-Oregon Corporation has sustained a serious loss of business and profits, and there is grave danger that other business will be lost to Washington-Oregon Corporation unless the relief herein prayed for be granted; that during the past six months the operating expenses of Washington-Oregon Corporation have substantially increased and the gross earnings have substantially decreased; that the property subject to the lien of said mortgage is inadequate security for the protection of the holders of the bonds issued thereunder and that unless a Receiver of such mortgaged property be appointed the interest of your orator and of the bondholders secured by said mortgage will be greatly injured and the value



of the security which your orator has for their protection will be further greatly impaired and diminished; and that it is necessary for the protection of your orator and of the holders of all of the bonds issued and outstanding under said mortgage, that a Receiver be appointed in this cause of the property mortgaged and pledged to your orator as trustee as aforesaid and of the tolls, earnings, income, rents, issues and profits thereof.

*Eighteenth.*—Your orator further shows that no proceedings at law or in equity have been begun or commenced by your orator, or, as your orator is informed and believes, by any holder of any of the bonds secured by said mortgage, or of any coupon thereto annexed, to enforce the payment of the sums so covenanted to be paid by Washington-Oregon Corporation under the terms of said mortgage, and that the amount of the controversy in this suit exceeds \$3000 exclusive of interest and costs.

Wherefore and forasmuch as your orator is remediless in the premises according to the strict rules of common law and can have relief only in a court of equity where matters of this kind are properly cognizable your orator prays equitable relief, as follows:—

1. That said defendants may be required to make answer respectively unto all and singular the matters hereinbefore stated and charged as fully and as particularly as if they were herein expressly and particularly interrogated concerning the same, but not under oath, answer under oath being hereby expressly waived.

2. That a decree be made directing that all properties real and personal acquired by or on behalf of Washington-Oregon Corporation since the recording of said mortgage as hereinbefore stated shall be taken to be subject to the lien and remedies provided for by such mortgage as fully and completely as though particularly described therein.

3. That a decree be made that the lien of said mortgage be established as a lien upon all the premises, franchises and other property, real and personal in said mortgage described, except such as have heretofore been conveyed by Washington-Oregon Corporation in accordance with Article II of said mortgage; that said mortgage is a lien upon all property, real and personal, acquired by Washington-Oregon Corporation since the recording of said mortgage, superior to the lien, if any, of each and all of the defendants and of all other claims, liens and encumbrances created subsequent to the recording of said mortgage and that the rights of all holders of bonds issued under said mortgage, in any and all the property, real and personal, of Washington-Oregon Corporation, mortgaged to secure the same, may be ascertained.

4. That a decree be made fixing the amount due upon said mortgage bonds outstanding, principal and interest, secured by said mortgage.

5. That a decree be made that the defendant, Washington-Oregon Corporation, do pay what shall appear to be due upon the ascertainment of all principal and interest unpaid upon said bonds and all expenses incurred by your orator as trustee before

the actual sale of the mortgaged premises under such decree, together with said sums aggregating \$25,902.-68 expended by your orator for the payment of taxes as aforesaid.

6. That a decree be made that in case the amount thus ascertained to be due as principal and interest upon the bonds outstanding and secured by said mortgage and for expenses and for the payment of taxes as aforesaid shall not be paid to your orator within the time to be limited by decree of your Honorable Court, the defendants, Washington-Oregon Corporation, Independent Electric Company and Willis D. Hoag, and all persons claiming under them or any of them any interest in said mortgaged property, and that all persons making claims as supply creditors or otherwise, to priority over said mortgage and all persons claiming under them or any of them, be absolutely barred and foreclosed of every right or equity of redemption of, in, and to the property conveyed by said mortgage or since acquired by or on behalf of Washington-Oregon Corporation and now held under such mortgage, and that a sale of the whole of the mortgaged property in one lot or parcel be ordered in accordance with the law and practice of this Honorable Court, and that the proceeds may be applied to the expenses of this suit and the compensation and disbursements of your orator as trustee in the execution of its trusts, to the payment of the amounts found to be due and unpaid upon the bonds outstanding and secured by said mortgage to the payment of your orator of said amounts expended by your orator for the payment

of taxes as aforesaid with interest thereon from the time of such payments, and the balance, if any, as the Court may direct.

7. That a decree be made that if the proceeds of sale shall be insufficient for the payment of the expenses of said trusts and costs of sale, said amounts expended for the payment of taxes, and all of the principal and interest of said outstanding bonds issued under said mortgage as aforesaid, the defendant, Washington-Oregon Corporation, may be adjudged to pay any deficiency thereof.

8. That a decree be made making proper allowances to your orator as trustee and its counsel for their respective expenses, compensation and fees.

9. That a decree be made that at said sale the purchase money may be paid either in cash or by owners of bonds secured by said mortgage in said bonds to such extent as said bonds shall be entitled to payment in cash out of the proceeds of sale.

10. That a decree be made appointing a receiver with the usual powers of receivers in like cases of the property pledged by said mortgage and of all other properties of Washington-Oregon Corporation, and of the tolls, earnings, income, rents, issues and profits thereof, and to preserve, manage and operate said property and to collect such tolls earnings, income, rents, issues and profits pending the sale thereof pursuant to the decree of this Honorable Court and to hold and dispose of such tolls, earnings, income, rents, issues and profits as this Honorable Court may direct, and that pending this suit a writ of injunction may be issued out of and under the seal of this Hon-



orable Court, directing, enjoining and restraining the said defendant, Washington-Oregon Corporation, its officers, agents and all other persons whomsoever from interfering with, transferring, selling or disposing of any of the property secured by said mortgage and any other property of Washington-Oregon Corporation.

11. That your orator may have such other and further relief as to this Honorable Court shall seem just.

May it please your Honors to grant unto your orator not only a writ of injunction conformable to the prayer of this Bill of Complaint to be issued to said Washington-Oregon Corporation, but also a writ of subpoena directed to said defendants, Washington-Oregon Corporation, Independent Electric Company and Willis D. Hoag, commanding them and each of them at a certain time and under a certain penalty to be therein specified, to be and appear before this Honorable Court then and there to answer the premises and to abide by the order and decree of the Court herein and that they may appear herein according to law.

FIDELITY TRUST COMPANY,

By WM. P. GEST,

Vice-President.

[Corporate Seal]

Attest: T. H. ATHERTON,

Asst. Secretary.

GEO. W. PEPPER,

RANDOLPH W. CHILDS,

Solicitors for Complainant.

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orable Court, directing, enjoining and restraining the said defendant, Washington-Oregon Corporation, its officers, agents and all other persons whomsoever from interfering with, transferring, selling or disposing of any of the property secured by said mortgage and any other property of Washington-Oregon Corporation.

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By WM. P. GEST,

Vice-President.

[Corporate Seal]

Attest: T. H. ATHERTON,

Asst. Secretary.

GEO. W. PEPPER,

RANDOLPH W. CHILDS,

Solicitors for Complainant.

State of Pennsylvania,  
County of Philadelphia,—ss.

William P. Gest, being duly sworn, says that he is an officer, to wit, Vice-President of the Fidelity Trust Company, the complainant in this suit; that he has read the foregoing bill of complaint and knows the contents thereof; that the allegations therein contained are true to his own knowledge except as to the matters therein stated to be alleged on information and belief and as to those matters he is informed and believes the same to be true; that the seal affixed to said bill of complaint is the corporate seal of said complainant and was so affixed by its authority.

WM. P. GEST.

Subscribed and sworn to before me this 23d day of July, 1914.

[Seal]

ANDREW B. MCGINNIS,  
Notary Public.

My commission expires March 10, 1917.

I am not a stockholder, director, officer or clerk in said corporation.

ACKNOWLEDGMENT (Notary).

16285.

State of Pennsylvania,  
County of Philadelphia,—ss.

I, Henry F. Walton, Prothonotary of the County of Philadelphia, and Clerk of the Court of Common Pleas of said County, which are Courts of Record having a common seal being the officer authorized by the laws of the State of Pennsylvania to make the



following Certificate, do Certify, That Andrew B. McGinnis, Esquire, whose name is subscribed to the certificate of the acknowledgment of the annexed Instrument and thereon written, was at the time of such acknowledgment a Notary Public for the Commonwealth of Pennsylvania, residing in the County aforesaid, duly commissioned and qualified to administer oaths and affirmations and to take acknowledgments and proofs of Deeds or Conveyances for lands, tenements and hereditaments to be recorded in said State of Pennsylvania, and to all whose acts, as such, full faith and credit are and ought to be given, as well in Courts of Judicature, as elsewhere; and that I am well acquainted with the handwriting of the said Notary Public and verily believe his signature thereto is genuine, and I further certify that the said instrument is executed and acknowledged in conformity with the laws of the State of Pennsylvania.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court, this 23 day of July, in the year of our Lord, One Thousand Nine Hundred and Fourteen (1914).

(Seal)

HENRY F. WALTON,

Prothonotary.

(Exhibits are attached to this bill of Complaint.)

(Filed July 31, 1914.)

[Endorsed]: No. 15—Equity. United States District Court, Western District of Washington. In Equity. Fidelity Trust Company, Trustee, Complainant, vs. Washington-Oregon Corporation, Independent Electric Company and Willis D. Hoag,

Defendants. Bill of Complaint. G. W. Pepper,  
R. W. Childs, Solicitors for Complainant. Land  
Title Building, Philadelphia, Pa.

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**[Certificate of Clerk, U. S. District Court to  
Supplemental Transcript of Record.]**

United States of America,  
Western District of Washington,—ss.

I, Frank L. Crosby, Clerk of the United States District Court for the Western District of Washington, do hereby certify and return that the foregoing and attached is the transcript of the Bill of Complaint (without the attached exhibits); the Exhibit "D," being only the first eight pages of said exhibit; and Exhibit "E," these two last exhibits being attached to the Supplemental Bill of Complaint, as the originals thereof appear on file in the case of Fidelity Trust Company, Trustee, vs. Washington, Oregon Corporation, Independent Electric Company, and Willis D. Hoag, No. 15—Equity, in this court, at Tacoma; the foregoing being a Supplemental Transcript requested by counsel for the plaintiff herein.

I further certify that the following is a full, true and correct statement of the expenses costs, fees, and charges incurred and paid in my office, by and on behalf of the petitioner herein (Fidelity Trust Company, Trustee) for making this supplemental transcript herein for filing in the United States Circuit Court of Appeals for the Ninth Circuit in the above cause, to wit:

Clerk's fees (Sec. 828, R. S. U. S.) for record, certificate and return, 81 fo. @ 15¢.....	\$12.15
Certificate of Clerk to transcript, 2 folios @ 15¢.....	.30
Seal to said Certificate.....	.20

ATTEST my hand and the seal of the United States District Court for the Western District of Washington, at Tacoma, this 10th day of May, A. D. 1916.

[Seal]

FRANK L. CROSBY,  
Clerk.

By E. C. ELLINGTON,  
Deputy Clerk.

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[Endorsed]: No. 2768. United States Circuit Court of Appeals for the Ninth Circuit. Crane Company, a Corporation, Appellant, vs. Fidelity Trust Company, Trustee, a Corporation, and Washington-Oregon Corporation, Independent Electric Company, a Corporation, and Willis D. Hoag, Appellees. Supplemental Transcript of Record. Upon Appeal from the United States District Court for the Western District of Washington, Southern Division.

Filed May 13, 1916.

FRANK D. MONCKTON,  
Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

By Paul P. O'Brien,  
Deputy Clerk.

